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October 6, 2010

***Via Email and  
Certified Mail Return Receipt Requested***

Ms. Barbara Nann, Attorney  
U.S. Environmental Protection Agency, Region 6  
Office of Regional Counsel  
Superfund Branch (6RC-S)  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Re:    Dispute Regarding EPA's Decision Document for the Time Critical Removal  
         Action at the San Jacinto River Waste Pits Superfund Site  
         Administrative Order on Consent for Time Critical Removal Action  
         CERCLA Docket No. 06-12-10  
         San Jacinto River Waste Pits Superfund Site, Harris County, Texas

Dear Ms. Nann:

This letter is written on behalf of McGinnes Industrial Maintenance Corporation ("MIMC") in response to your letter dated October 4, 2010 regarding the above-referenced matter. While MIMC does not disagree with EPA's decision to not extend the Negotiation Period, it does disagree with several statements made in the October 4, 2010 letter.

First, in the second paragraph of your letter, you state that "The negotiations became mired in discussions by Respondents that there are minimal health effects from dioxin and that dioxin is not bad for human consumption." MIMC does recall that the issue of dioxin toxicity was discussed during the September 16, 2010 conference call between Respondents and EPA; however, we respectfully disagree with any implication that this was a major topic of discussion during the September 16, 2010 conference call or that the Respondents stated or intimated that "dioxin is not bad for human consumption." It is our recollection that in response to your question regarding the Respondents' opinion regarding the toxicity of dioxin, we simply stated that (i) the Respondents and EPA probably have different opinions regarding the level of toxicity of dioxin; (ii) there is widespread disagreement within the scientific community regarding the susceptibility of humans to dioxin toxicity; (iii) animals are affected by dioxins in a very species-specific manner; and (iv) scientific observations indicate humans are one of the least sensitive species. I mentioned as an example the infamous 2004 dioxin poisoning of Ukrainian President Viktor Yushchenko that resulted in blood levels of TCDD of 100,000 parts per trillion. Despite

this high dose of dioxin, Yushchenko's only health effect was a severe case of chloracne, which is the only definitive human health effect associated with dioxin. Respondents never stated either in the September 10, 2010 notice of dispute or during the September 16, 2010 conference call that discharges of dioxin into the San Jacinto River or human exposures to dioxin should be taken lightly. In fact, the time critical removal action ("TCRA") design proposed by Respondents was and is intended to prevent any such discharges or exposures.

Second, you state in the third paragraph that "Respondent's [sic] dispute is based entirely on" an alleged approval of Respondents' flow criteria analysis which endorsed a removal action with a "thinner interim protective barrier than what was proposed in EPA's Decision Document." This is not true. The issue of whether EPA had preliminarily approved Respondents' flow criteria analysis was specifically discussed during the September 16, 2010 conference call during which Respondents told Valmichael Leos and you that MIMC's September 10, 2010 letter should not be interpreted by EPA as stating that EPA had provided a written approval of Respondents' flow criteria analysis. What we stated was that because the flow criteria are extremely important in designing the TCRA, this issue was raised early during the discussions between Respondents and EPA representatives regarding various alternative TCRA designs and that EPA representatives never stated during the course of those discussions that a 10-year flow design was improper or inadequate. As a result, the 10-year flow event was used as the basis of the Respondents' TCRA Alternatives Analysis. Respondents' dispute is not "based entirely on" an alleged approval of the flow criteria analysis; the dispute is based on EPA's ultimate decision to approve a design that was not included as one of the alternatives presented by the Respondents in its TCRA Alternatives Analysis and that is based on a 100-year flow event rather than the 10-year flow event used by Respondents.

If you have any questions regarding these two clarifications regarding MIMC's position in this matter, please do not hesitate to call.

Sincerely,



Albert R. Axe, Jr.

cc: John Cermak  
David Keith